

## Part II. Nonresident Aliens and Foreign Corporations

### Section 883 --Exclusions from Gross Income (Also Section 872, 894)

#### 26 CFR §1.883: Exclusion of Income from the International Operation of Ships or Aircraft

Rev. Rul. 2008-17

#### **Purpose**

The purpose of this revenue ruling is to assist a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an “equivalent exemption” from tax for purposes of section 883(a) and (c) of the Internal Revenue Code (Code). This revenue ruling is also intended to assist a nonresident alien individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption from tax for purposes of section 872(b) of the Code. This revenue ruling provides lists of countries that may provide various forms of equivalent exemptions. This revenue ruling does not, however, provide substantive guidance under section 883 of the Code. For detailed guidance, see Treas. Reg. §1.883-0 through §1.883-5 (T.D. 9087, 2003-2 C.B. 781, as amended by T.D. 9218, 2005-2 C.B. 503), and Treas. Reg. § 1.883-0T through §1.883-5T (T.D. 9332, 2007-32 I.R.B. 300).

#### **Background**

Section 883(a) of the Code generally provides that gross income derived by a foreign corporation from the international operation of ships or aircraft shall not be included in the gross income of such foreign corporation, and shall be exempt from U.S. taxation, if the country in which the corporation is organized grants an equivalent exemption to corporations organized in the United States (U.S. corporations). Section 883(c)(1) provides that the exemption provided by section 883(a) is not available if 50 percent or more of the value of the stock of the foreign corporation is owned by individuals who are not residents of a country that grants an equivalent exemption to U.S. corporations. Thus, a foreign corporation seeking to avail itself of the exemption from tax under section 883 must determine whether it is organized in a country that provides an equivalent exemption to U.S. corporations and whether its shareholders are organized in, or residents of, a country that provides an equivalent exemption to U.S. corporations. Treasury regulation §1.883-1(c)(3) also requires a foreign corporation claiming an exemption from tax to provide the applicable authority for an equivalent exemption with its Form 1120-F (U.S. Income Tax Return of a Foreign Corporation).

Treasury regulation §1.883-1(h)(1) provides that an equivalent exemption may exist if a foreign country generally imposes no tax on income or specifically provides an exemption under domestic law for income derived from the international operation of ships or aircraft. Alternatively, a foreign country may exchange a diplomatic note, or enter into an agreement, with the United States that provides for an equivalent exemption for purposes of section 883. Treas. Reg. §1.883-1T(h)(1) broadens the definition of equivalent exemption to include an exemption provided by income tax convention, provided the foreign corporation meets certain additional conditions set forth in §1.883-1T(h)(3).

## **Table I**

Part A of Table I of this revenue ruling provides a list of countries that grant an equivalent exemption as evidenced by a diplomatic note exchanged with the United States.

Part B of Table I provides a list of countries that grant an equivalent exemption to U.S. corporations by statute or decree, or by not imposing tax on income from the international operation of ships or aircraft. The Internal Revenue Service (IRS) generally has made the determinations based upon information submitted by the foreign country regarding its domestic law in effect at the time of the submission. The date of the IRS's review of the foreign country's law is reflected in the first column of Part B of Table I. The list of countries included in Part B of Table I is not an exhaustive list of the countries which provide an equivalent exemption under domestic law. Other countries that have not submitted the information necessary for the IRS to make a determination also may grant an equivalent exemption.

Because Part B of Table I does not reflect any changes to a country's domestic law since the IRS's review, a foreign corporation and its shareholders should independently verify the accuracy of the information in Part B of Table I as it relates to the relevant taxable year.

Consistent with past practice, the IRS will entertain a request from a foreign government to determine whether the domestic law of the foreign country provides an equivalent exemption for one or more categories of income that may be exempt from U.S. taxation under section 883. Accordingly, taxpayers may ask the relevant foreign government to contact the IRS for this purpose. The letter from the foreign government official should be addressed to the Associate Chief Counsel (International), Internal

Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Attn: CC:INTL:Br1. The letter should state the name, citation, and effective date of the statute or decree, and generally describe the application of the country's domestic law to income derived by U.S. persons from the international operation of ships or aircraft and from calling on ports or airports in that country. For example, the letter should discuss whether the law provides an exemption for each category of income described in §1.883-1(h)(2)(i) through (viii). A copy of the relevant statute or decree as published in an official government publication and a certified English translation of the document, if it was not published in English, should be attached to the letter.

## **Table II**

Table II of this revenue ruling provides a list of countries that have entered into income tax conventions with the United States that include a shipping and air transport article or a gains article. Prior to the issuance of §1.883-1T(h)(3), a foreign corporation organized in a country that only provided an exemption from tax through an income tax convention with the United States was not considered organized in a country that granted an equivalent exemption for purposes of section 883. For taxable years of foreign corporations beginning on or after June 25, 2007, §1.883-1T(h)(3)(i) provides that if a foreign corporation is organized in a foreign country that only provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention with the United States, then such foreign corporation may treat the exemption from tax provided by the income tax convention as an equivalent exemption for purposes of section 883, but only if: (1) the foreign corporation meets all the conditions for claiming benefits with respect

to such profits under the income tax convention, including the limitation on benefits article; and (2) the profits that are exempt from tax pursuant to the income tax convention also fall within a category of income described in §1.883-1(h)(2)(i) through (viii).

A foreign corporation that relies on an income tax convention as providing an equivalent exemption with respect to a particular category of income under §1.883-1T(h)(1)(ii) must demonstrate not only that it qualifies for benefits under the income tax convention but also that it meets the requirements of section 883. For example, a corporation that is considered a resident of a foreign country that grants an equivalent exemption because it is managed and controlled in that country will not qualify for an exemption from tax under section 883(a) unless the corporation is also organized in that country. Similarly, a foreign corporation that does not meet one of the stock ownership tests described in §1.883-1(c)(2) may not claim an exemption from tax under section 883, even if it qualifies for benefits under the limitation on benefits article of the relevant income tax convention.

Table II summarizes the bases for claiming an exemption under each income tax convention, including whether the exemption under the shipping and air transport article is based solely on residence, or, as in the case of certain older income tax conventions, the exemption has an additional requirement of documentation or registration. Table II now also includes limitation on benefits articles as a condition for claiming benefits. Table II does not set forth other benefits relating to a shipping or an air transport business that may be provided under articles covering business profits, rentals and royalties, or other income because such benefits are not relevant for purposes of section 883(a) or (c).

Table I and Table II are intended only as a summary, and the full text of any relevant

diplomatic note, foreign law, or income tax convention (including any protocol thereto, any agreement, any diplomatic note accompanying the convention, or the technical explanation of the income tax convention) should be consulted. The IRS and Treasury Department intend to update the tables periodically.

#### **CHANGES TO REV. RUL. 2001- 48**

In Part A of Table I, Angola, the Cape Verde Islands, Ghana, and the Bailiwick of Jersey have been added to the list of countries that have exchanged diplomatic notes with the United States.

In Part B of Table I, the British Virgin Islands, Croatia, Gibraltar, Kuwait (shipping only), Monaco, Qatar (shipping only), and Uruguay have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

In Table II, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Bangladesh and Sri Lanka. The following countries have entered into new income tax conventions or protocols with the United States that contain new shipping and air transport articles that supersede prior income tax conventions reported in Rev. Rul. 2001-48: Australia, Belgium, Japan, and the United Kingdom.

A subheading has been added under the heading Basis for Exemption to notify any foreign person, whether it is the corporation seeking an exemption from tax under section 883, or a shareholder of such corporation, that it may not treat an income tax convention as granting an equivalent exemption unless that person qualifies for benefits under the limitation on benefits article, if any, in that income tax convention. Footnote number 35

has also been added to identify those countries that provide an equivalent exemption from tax only through an income tax convention with the United States.

## **TO CLAIM AN EXEMPTION**

Nonresident alien individuals claiming an exemption from U.S. taxation under section 872(b) of the Code must file a return on Form 1040NR (U.S. Income Tax Return of a Nonresident Alien), follow the accompanying instructions, and claim the exemption. Foreign corporations claiming an exemption under section 883 must file a return on Form 1120F (U.S. Income Tax Return of a Foreign Corporation), follow the accompanying instructions, and comply with the relevant reporting provisions of Treas. Reg. §1.883-1(c)(3).

## **EFFECT ON OTHER REVENUE RULINGS**

Rev. Rul. 89-42, Rev. Rul. 97-31, and Rev. Rul. 2001-48 are modified and superseded.

## **DRAFTING INFORMATION**

The principal author of this revenue ruling is Patricia A. Bray of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Patricia A. Bray at (202) 622-5871 (not a toll-free call).

TABLE I

**Countries Granting Equivalent Exemptions For  
Income From The International Operation of  
Ships and Aircraft**

**PART A - EXCHANGE OF NOTES<sup>1</sup>**

Countries And Territories	Cumulative Bulletin Or Internal Revenue Bulletin Citation	<u>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED<sup>2</sup></u>				
		Operating Income	Full Rental (Time or voyage charter)	Bareboat Rental	Incidental Container Rental	Cap <sup>3</sup> Gains
Angola	2007-42 I.R.B. 801	X	X	X	X	X
Argentina	1988-1 C.B. 456	X	X	X	X	X
Bahamas	1988-1 C.B. 458	X	X	X	X	-
Bahrain	2000-46 I.R.B. 475	X	X	X	X	X
Belgium	1988-1 C.B. 459	X	X	-	X	-
Bolivia <sup>4</sup>	1988-1 C.B. 460	X	X	X	X	-
Cape Verde	2005-2 C.B. 855	X	X	X	X	X
Chile <sup>5</sup>	1991-1 C.B. 304	X	X	X <sup>3</sup>	X	-
Colombia	1988-1 C.B. 461	X	X	X	X	-
Cyprus	1989-2 C.B. 332	X	X	X	X	-
Denmark	1988-1 C.B. 462	X	X	X	X	-
El Salvador <sup>5</sup>	1988-1 C.B. 463	X	X	X	X	X
Ethiopia	1999-1 C.B. 1134	X	X	X	X	X
Fiji	1996-2 C.B. 202	X	X	X	X	X
Finland	1989-2 C.B. 334	X	X	X	X	-
Ghana	2002-1 C.B. 725	X	X	X	X	X
Greece	1988-2 C.B. 366	X	X	X	X	-
Hong Kong <sup>6/7</sup>	1995-1 C.B. 228	X	X	X	X	X
India	1990-2 C.B. 316	X	X	X <sup>3</sup>	X	X
Isle of Man <sup>6</sup>	1990-2 C.B. 317	X	X	X	X	X
Japan	1990-2 C.B. 318	X	X	X	X	-
Jersey	2007-10 I.R.B. 665	X	X	X	X	X
Jordan	1996-2 C.B. 202	X	X	X	X	-

<b>Liberia</b>	<b>1988-1 C.B. 463</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Luxembourg</b>	<b>1996-2 C.B. 203</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>-</b>
<b>Malaysia</b>	<b>1990-2 C.B. 319</b>	<b>X</b>	<b>X</b>	<b>X<sup>3</sup></b>	<b>X</b>	<b>X</b>
<b>Malta</b>	<b>1997-1 C.B. 314</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Marshall Islands</b>	<b>1990-2 C.B. 321</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Norway</b>	<b>1991-1 C.B. 304</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Pakistan<sup>6</sup></b>	<b>1991-1 C.B. 305</b>	<b>X<sup>8</sup></b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Panama</b>	<b>1988-2 C.B. 366</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>-</b>
<b>Peru<sup>6</sup></b>	<b>1989-2 C.B. 335</b>	<b>X</b>	<b>X</b>	<b>X<sup>3</sup></b>	<b>X</b>	<b>-</b>
<b>St. Vincent &amp; Grenadines</b>	<b>1989-2 C.B. 336</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>-</b>
<b>Saudi Arabia<sup>9</sup></b>	<b>2000-22 I.R.B. 1126</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Singapore</b>	<b>1990-2 C.B. 323</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Sweden</b>	<b>1988-1 C.B. 466</b>	<b>X</b>	<b>X</b>	<b>X<sup>3</sup></b>	<b>X</b>	<b>-</b>
<b>Taiwan</b>	<b>1989-2 C.B. 337</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>-</b>
<b>United Arab Emirates</b>	<b>1998-2 C.B. 528</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Venezuela</b>	<b>1988-1 C.B. 467</b>	<b>X</b>	<b>X</b>	<b>X<sup>3</sup></b>	<b>X</b>	<b>X</b>

## **PART B - DOMESTIC LAW**

### **TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED<sup>2</sup>**

<b>Countries And Territories</b>	<b>Date Foreign Law Reviewed</b>	<b>Operating Income</b>	<b>Full Rental (Time or voyage charter)</b>	<b>Bareboat Rental</b>	<b>Incidental Container Rental</b>	<b>Cap<sup>3</sup> Gains</b>
Antigua & Barbuda <sup>6</sup>	NOV 1991	X	X	X	X	X
Aruba	JUNE 1999	X	X	X	X	-
Barbados	OCT 1989	X	X	X	X	X
Bermuda	NOV 1988	X	X	X	X	X
Brazil <sup>10</sup>	DEC 1988	X	X	X <sup>3</sup>	X	-
British Virgin Islands	MAR 2003	X	X	-	-	-
Bulgaria	FEB 1989	X	X	X	X	X
Cayman Islands <sup>11</sup>	JAN 1987	X	X	X	X	X
Chile <sup>6</sup>	OCT 1988	X	X	X	X	X
Croatia	FEB 2007	X	X	X	X	X
Ecuador <sup>6/12</sup>	DEC 1989	X	X	X <sup>3</sup>	X	X
Gibraltar	JULY 2006	X	X	X	X	X
Israel	FEB 1991	X	X	X	X	X
Kuwait <sup>6</sup>	APRIL 2007	X	X	X	X	-
Monaco	JAN 2005	X	X	X	X	X
Netherlands	OCT 1988	X	X	X <sup>3</sup>	X	-
Netherlands Antilles	MAY 1988	X	X	X	X	X
Peru <sup>5</sup>	SEPT 1995	X	X	X	X	X
Portugal <sup>10</sup>	Ships	JUNE 1989	X	X	-	-
	Aircraft	FEB 1989	X	X	-	-
Qatar	Ships <sup>6</sup>	JAN 1993	X <sup>8</sup>	-	-	-
	Aircraft <sup>5</sup>	AUG 1994	X <sup>8</sup>	-	-	-
Spain <sup>13</sup>	DEC 1988	X	X	-	X	-
Surinam	NOV 1999	X	X	X	X	X
Turkey <sup>14</sup>	JAN 1987	X	-	-	X	-
Turks & Caicos <sup>11</sup>	FEB 1990	X	X	X	X	X
Uruguay	JAN 2007	X <sup>8</sup>	-	-	-	-
U.S. Virgin Islands	OCT 1988	X	X	X	X	X
Vanuatu	MAY 1987	X	X	X	X	X

TABLE II

**Countries Granting Exemptions from Tax by Income Tax Convention<sup>15</sup>**

Countries And Territories	<b><u>BASIS FOR EXEMPTION</u></b>			<b><u>TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED<sup>2</sup></u></b>				
	Resi- dence Based No Flag	Resi- dence & Flag Reci- procal	LOB <sup>29</sup> Article	Operating Income	Full Rental (Time or voyage charter)	Bare- Boat Rental	Incidental Container Rental	Cap Gains
Australia <sup>19/35</sup>	X	-	X	X	X <sup>16</sup>	X <sup>3</sup>	X	X
Austria <sup>35</sup>	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Bangladesh <sup>19/35</sup>	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Barbados	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Belgium <sup>19</sup>	X		X	X	X	X <sup>20</sup>	X	X
Canada <sup>35</sup>	X	-	X	X	X	X	X	X
China <sup>22/35</sup> (People's Republic)	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Cyprus	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Czech Republic <sup>35</sup>	X	-	X	X	X	X <sup>3</sup>	X	X
Denmark	X	-	X	X	X	X <sup>20</sup>	X	X
Egypt	X	-	-	X	X <sup>3</sup>	X <sup>3</sup>	X	-
Estonia <sup>35</sup>	X	-	X	X	X	X <sup>3</sup>	X	X
Finland	X	-	X	X	X <sup>3</sup>	X <sup>3</sup>	X	X
France <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
Germany <sup>24/35</sup>	X	-	X	X	X	-	X	X
Greece	-	X	-	X <sup>8</sup>	-	-	-	-
Hungary <sup>35</sup>	X	-	-	X	X <sup>3</sup>	X <sup>3</sup>	X	X
Iceland <sup>35</sup>	-	X <sup>25</sup>	-	X	X <sup>3</sup>	X <sup>3</sup>	X	X
India	X	-	X	X	X <sup>3</sup>	X <sup>3</sup>	X	X
Indonesia <sup>35</sup>	X	-	X	X	X	X <sup>27</sup>	X	X
Ireland <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
Israel	X	-	X	X	X <sup>3</sup>	X <sup>3</sup>	X	X
Italy <sup>28/29/35</sup>	-	X <sup>25</sup>	X	X	X <sup>30</sup>	X <sup>3</sup>	X	X
Jamaica <sup>35</sup>	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Japan <sup>28/19</sup>	X	-	X	X	X <sup>3</sup>	X	X	X

Kazakhstan <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
Korea <sup>35</sup>	X	-	-	X	X <sup>32</sup>	-	X	-
Latvia <sup>35</sup>	X	-	X	X	X	X <sup>17</sup>	X	X
Lithuania <sup>35</sup>	X	-	X	X	X	X <sup>17</sup>	X	X
Luxembourg	X	-	X	X	X	X <sup>20</sup>	X	X
Mexico <sup>35</sup>	X	-	X	X	X	X <sup>23</sup>	X	X
Morocco <sup>35</sup>	-	X <sup>21</sup>	-	X <sup>8</sup>	-	-	-	X
Netherlands	X	-	X	X	X <sup>3</sup>	X <sup>3</sup>	-	X
New Zealand <sup>35</sup>	X	-	X	X	X	X <sup>3</sup>	X	X
Norway <sup>28</sup>	X	-	-	X	X <sup>32</sup>	X <sup>3</sup>	X	X
Pakistan <sup>5</sup>	-	X	-	X <sup>8</sup>	-	-	-	-
Philippines <sup>6/35</sup>	X	-	-	-	-	-	-	X
Poland <sup>35</sup>	-	X <sup>25</sup>	-	X	X <sup>3</sup>	X <sup>3</sup>	X	X
Portugal <sup>35</sup>	X	-	X	X	X	X <sup>3</sup>	-	X
Romania <sup>35</sup>	-	X	-	X	X <sup>3</sup>	X <sup>3</sup>	X	X
Russian Federation <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
Slovak Republic <sup>35</sup>	X	-	X	X	X	X <sup>3</sup>	X	X
Slovenia <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
South Africa <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
Spain	X	-	X	X	X	X <sup>3</sup>	X	X
Sri Lanka <sup>5/19/31/35</sup>	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	-	-
Sweden	X	-	X	X	X	X <sup>3</sup>	X	X
Switzerland <sup>35</sup>	X	-	X	X	X <sup>33</sup>	X <sup>3</sup>	-	X
Thailand <sup>35</sup>	X <sup>5</sup> X <sup>6</sup>	- -	X X	X -	X -	X <sup>3</sup> -	X -	X X
Trinidad & Tobago <sup>35</sup>	-	X <sup>25</sup>	-	X	X <sup>3</sup>	X <sup>3</sup>	-	X
Tunisia <sup>35</sup>	X	-	X	X	X <sup>20</sup>	X <sup>20</sup>	X	X
Turkey	X	-	X	X	X	X <sup>3</sup>	X	X
Ukraine <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X
USSR/NIS <sup>34/35</sup>	-	X	-	X <sup>8</sup>	-	-	-	X
U.K. <sup>19/35</sup>	X	-	X	X	X	X <sup>3</sup>	X	X
Venezuela <sup>35</sup>	X	-	X	X	X	X <sup>20</sup>	X	X

## FOOTNOTES TO TABLES

- 1 Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988 are interpreted in accordance with the technical corrections enacted by that Act.
- 2 Under the heading "Types of Shipping and Aircraft Income Exempted" unless otherwise footnoted, an "X" indicates full exemption whether or not there is a permanent establishment.
- 3 The tax exemption is available only if the income is incidental to operating income.
- 4 The note was ratified by the Bolivian Congress and signed by the Bolivian President. The note and exemption officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date.
- 5 This exemption applies to aircraft only.
- 6 This exemption applies to shipping only.
- 7 This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97-40, 1997-2 C.B. 287, to the Hong Kong Special Administrative Region of the People's Republic of China on or after July 1, 1997. The note does not apply with respect to the People's Republic of China, which will continue to be treated as a separate country for purposes of the Internal Revenue Code.
- 8 Operating income is not defined.
- 9 The note is effective for all taxable years beginning on or after January 1, 1999, and for all prior open taxable years.
- 10 Only corporations are exempt under the Brazilian and Portuguese statutes.
- 11 The country generally imposes no income tax.
- 12 This exemption is generally effective for all open years beginning on or after January 1, 1987.
- 13 The Spanish statute exempts only corporations.
- 14 See generally Rev. Rul. 87-18, 1987-1 C.B. 178 (explaining the application of Turkey's domestic-law exemption).

- 15 Table II is relevant for determining whether a shareholder of a foreign corporation is a resident of a country that grants an equivalent exemption by means of an income tax convention with the United States. Table II is also relevant for determining whether a foreign corporation itself is eligible to claim an exemption under section 883(a) when it is organized in a country that only provides an exemption by means of an income tax convention.
- 16 Lessor must either regularly lease ships or aircraft on a full basis or operate them in international traffic.
- 17 This exemption applies if the ships or aircraft are operated in international traffic by the lessee, and the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- 18 Except to the extent depreciation has been allowed in the other country.
- 19 The following countries have entered into new income tax conventions or protocols with the United States that contain new Shipping and Air Transport articles that supersede prior income tax conventions reported in Rev. Rul. 2001-48:
- |                     |                 |
|---------------------|-----------------|
| Australia.....      | January 1, 2004 |
| Bangladesh.....     | January 1, 2007 |
| Belgium.....        | January 1, 2008 |
| Japan.....          | January 1, 2005 |
| Sri Lanka.....      | January 1, 2004 |
| United Kingdom..... | January 1, 2004 |
- 20 This exemption applies if the ships or aircraft are operated in international traffic by the lessee, or the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- 21 In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing an equivalent exemption between such country and the country of residence.
- 22 Pursuant to Notice 97-40, 1997-2 C.B. 287, the treaty between the United States and the People's Republic of China (China) will continue to apply only to China and will not apply to the Hong Kong Special Administrative Region of the People's Republic of China. The Shipping and Aircraft Agreement between China and the United States was ratified on September 6, 1983. The Shipping and Aircraft Agreement is separate from the income tax treaty with China.

- 23 The exemption applies except where the containers are used solely between places within the other Contracting State.
- 24 This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.
- 25 Documentation or registration required for ships or aircraft of United States residents only.
- 26 This treaty exempts gains derived by an enterprise of a Contracting State if the ships or aircraft or containers are owned and operated by the enterprise and the income from them is taxable only in that State.
- 27 Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships also is exempt if the ship is operated in international traffic and if the lessee is not a resident of, or does not have a permanent establishment in, the other Contracting State.
- 28 See also the diplomatic notes or protocol accompanying this treaty.
- 29 Each country identified in this column has entered into an income tax convention with the United States that contains a comprehensive limitation on benefits article. Accordingly, if a foreign corporation or shareholder of a foreign corporation intends to rely on an equivalent exemption provided through such an income tax convention with the United States, that person must be a resident of that country for treaty purposes and satisfy the limitation on benefits article in that convention.
- 30 This exemption applies if the ship or aircraft is operated in international traffic or if the rental income is incidental to income from such international operation.
- 31 In connection with the revised U.S. protocol with Sri Lanka, an exchange of notes signed September 20, 2002, provides, “[w]ith respect to Article 8 (Shipping and Air Transport), it is understood that Sri Lanka shall exempt from tax the profits of an enterprise of the United States from sources within Sri Lanka from the operation in international traffic of ships for as long as there remains in force Article 8 of the Convention between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at London on June 21, 1979; Article 8 of the Convention Between the Government of the Polish People’s Republic and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income

and Capital, signed at Colombo on April 25, 1980; or any provision granting the same treatment as accorded under aforesaid provisions to a resident of a third state.”

- 32 As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.
- 33 This exemption applies if the ships or aircraft are used by the lessee in international traffic.
- 34 The U.S. - U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the New Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. See Treasury News NB-1763.
- 35 This country only provides an exemption from tax through an income tax convention with the United States. A corporation organized in this country and claiming an exemption under section 883(a) must satisfy the additional requirements set forth in §1.883-1T(h)(3).